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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

FILE:

EAC 99 237 50558

Office: Vermont Service Center

Date: MAY 01 2002

IN RE: Petitioner:
Beneficiary:

APPLICATION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the
Immigration and Nationality Act, 8 U.S.C. 1154(a)(1)(A)(iii)

IN BEHALF OF PETITIONER:

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center. A subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is now before the Associate Commissioner on a motion to reopen. The motion will be granted, and the case will be remanded to the director for further action.

The petitioner is a native and citizen of Iran who is seeking classification as a special immigrant pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1154(a)(1)(A)(iii), as the battered spouse of a United States citizen.

The director denied the petition after noting that the petitioner's divorce decree contained several alterations and appears she was divorced prior to the filing of the self-petition. The director, therefore, denied the petition after determining that the petitioner failed to establish that she is the spouse of a citizen or lawful permanent resident of the United States.

Upon review of the record of proceeding, the Associate Commissioner noted that no explanation was offered by the court for the alterations or discrepancies of the divorce decree. He, therefore, concurred with the director's conclusion and denied the petition on November 7, 2001.

On motion, counsel submits an affidavit from Douglas C. Warne stating:

I am the presiding judge of the 311th District Court of Harris County, Texas. There was previously pending in this court a Divorce action under Cause No. 98-59887, in which [REDACTED] was the Petitioner and Touran Hamvatan was the Respondent. A final hearing was held and the divorce granted on August 9, 1999. I signed the Decree of Divorce on August 10, 1999. Those dates are correctly reflected on the Decree as signed by the court.

The record reflects that on August 3, 1999, the self-petition was filed by the petitioner claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, her United States citizen spouse during their marriage. Based on the affidavit from Judge Warne, the judgment of divorce became effective on August 9, 1999. Therefore, the self-petition was properly filed with the Service prior to the divorce. The petitioner has overcome this finding of the director pursuant to 8 C.F.R. 204.2(c)(1)(i)(A).

The case, however, will be remanded so that the director may review the record of proceeding to determine whether all other criteria listed in 8 C.F.R. 204.2(c)(1) are satisfied. The director shall

enter a new decision which, if adverse to the petitioner, is to be certified to the Associate Commissioner, Examinations, for review, and without fee.

ORDER: The Associate Commissioner's decision dated November 7, 2001 is withdrawn. The case is remanded for appropriate action consistent with the above discussion and entry of a new decision.